

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>JESSICA L. MOORE,</b>	)	
	)	
<b>Plaintiff</b>	)	
<b>v.</b>	)	<b>Civil Action No. 7:04cv054</b>
	)	
<b>CVS CORPORATION</b>	)	
<b>and</b>	)	
<b>MUFIED TANEEB,</b>	)	
	)	
<b>Defendants</b>	)	

**DISCOVERY ORDER**

This matter is before the Court on several discovery motions. A hearing was held on March 10, 2005 on plaintiff Jessica L. Moore's ("Moore's") motion to compel discovery responses; Moore's motion to quash a third party subpoena issued by defendant CVS Corporation ("CVS"); and defendant Mufied Taneeb's ("Taneeb's") motion for additional time to complete the deposition of Moore.

**I**

First, plaintiff moved to compel production of responses to various discovery requests. Defendant objected to certain of the requests in a timely fashion, indicating that further discovery responses would be made upon entry of an agreed protective order.

Plaintiff insists that she is entitled to the discovery as it is relevant to her claims and that defendant CVS' objection to the discovery is not well founded as no formal motion for protective order was filed.

While it is true that no formal motion for a protective order was filed, more than seven months ago defendant CVS asked Moore to agree to the terms of a protective order concerning certain of its business records which it deems to be proprietary or which involve confidential personal information about plaintiff Moore or defendant Taneeb. Moore raised no specific objection to any terms in the proposed protective order other than to say that no formal motion had been filed and that plaintiff's counsel thought that Judge Wilson would not enter such an order.

Given that the information requested seeks the personnel files of parties to this action and other personal or confidential business information concerning the parties and CVS, a protective order is an appropriate tool to use to facilitate the orderly exchange of discoverable information, and the specific terms of the protective order suggested by CVS accomplishes this goal. As such, it will be entered.

The entry of the protective order in this case moots many of the objections raised by defendant CVS to discovery, and CVS is ORDERED to fully respond to the discovery propounded to it in requests 8, 9, 10, 12, 14, 15, 18 and 20. To the extent that any responses to these requests implicate any applicable privilege, CVS is to provide a detailed privilege log, disclosing the following information concerning any information withheld from discovery:

Author, Date, Recipient, Nature of Document and Basis for Assertion of Privilege.

As regards Request 3, counsel for CVS produced those documents in open court, therefore the motion to compel as regards that request is denied as moot.

As regards Request 4, counsel for CVS stated that plaintiff's counsel could review his copy of materials received from the EEOC. Therefore the motion to compel as regards that request is denied as moot.

As regards Requests 6 and 7, CVS is directed to produce documents concerning Roanoke, Virginia CVS retail locations responsive to these requests dated between October, 1997 to October, 2002 (the five years during and preceding Moore's employment).

As regards Request 19, the motion to compel was withdrawn by Moore.

## **II**

Plaintiff Moore orally moved to withdraw her motion to quash the subpoena to a third party as the documents had been produced, mooted that issue.

## **III**

Defendant Taneeb moved to extend the time to take the deposition of the plaintiff, contending that he needs approximately an additional three (3) hours to complete Moore's deposition. Taneeb argued that counsel for codefendant CVS deposed Moore for roughly 6 hours and 45 minutes, and when he asked counsel to agree to extend the time of the deposition to allow him to conduct an examination relative to the claims against his client, counsel for plaintiff declined.

The seven hour limitation on a party's deposition set out in Rule 30(d)(2) was imposed to rectify the problem that "overlong depositions can result in undue costs and delays in some circumstances." Advisory Committee Note to 2000 Amendments to Rule 30(d). The Advisory Committee Notes provide that counsel can agree to extend the time limit by agreement. Relevant to this case, the Advisory Committee Notes provide further that "[i]n multi-party cases, the need for each party to examine the witness may warrant additional time, although duplicative questioning should be avoided and parties with similar interests should strive to designate one lawyer to question about areas of common interest." Id. Finally, the Advisory Committee Notes suggest that a rigid application of the

seven hour rule ought not provide a unnecessary roadblock to the interests of justice, noting that “[i]t is expected that in most instances the parties and the witness will make reasonable accommodations to avoid the need for resort to the court,” and “[p]reoccupation with timing is to be avoided.” Id.

In this case, three things are plain. First, plaintiff’s counsel’s refusal to allow counsel for Taneeb to conduct an examination of Moore is not a reasonable accommodation given the claims in this case, the number of documents introduced and discussed at the deposition, the manner in which the deposition was conducted and the request made by counsel for Taneeb at the deposition. Second, the Federal Rules, including Rule 30(d)(2), were crafted to serve the interests of justice and to allow for “a fair examination of the deponent.” Fed. R. Civ. P. 30(d)(2). After reviewing the pleadings in this case and the transcript of the Moore deposition, the court finds that “a fair examination” requires that Taneeb be provided a reasonable accommodation to conduct his examination of Moore. It is not anticipated that an extension of more than four (4) hours is necessary to complete the deposition of plaintiff in this case. Third, there is no suggestion in this case that the deposition was conducted in a manner that was inappropriate under the Federal Rules or that it was done “in bad faith, or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party,” Fed. R. Civ. P. 30(d)(4), and, as such, given the multiple parties in this case, the position taken by counsel for plaintiff reflects just the sort of “[p]reoccupation with timing” that the Advisory Committee indicated should be avoided.

Review of the cases decided since the 2000 amendment suggest no contrary result. Plaintiff cites three cases for the proposition that the seven-hour limit imposed in Rule 30(d)(2) is near absolute absent an extremely rigorous showing of good cause requiring the court to review transcripts of the actual deposition. See Melhorn v. N.J. Transit Rail Operations, Inc., 203 F.R.D. 176, 180 (E.D. Pa.

2001); Beneville v. Pileggi, 2004 U.S. Dist. LEXIS 13586 (D. Del. July 19, 2004); Nicholas v. Wyndham Int'l, Inc., 2002 U.S. Dist. LEXIS 27111 (D.V.I Nov. 18, 2002) (citing Malec v. Trs. of Boston Coll., 208 F.R.D. 23, 24 (D. Mass. 2002), for the proposition that "the party seeking an extension must move therefor upon a demonstration of good cause").

In Melhorn, the court held only that defendant would not be allowed to depose defendant again in a quest to “preserve the impeachment value of surveillance which was taken after plaintiff’s initial deposition.” 203 F.R.D. at 181. The court held that “[p]reserving the impeachment value of surveillance conducted after Plaintiff’s initial deposition does not warrant subjecting Plaintiff to another deposition.” Id. In Beneville, the court held that although “Rule 30(d)(2) permits the Court to grant additional time ‘if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination,’ apart from ad hominem attacks by plaintiff’s counsel, the court was provided with no evidence such as ‘the deposition transcript or any other support for their arguments,’ and as such, plaintiff had not met their burden for receiving additional time.”<sup>1</sup> See id. \*3 (emphasis added). In Nicholas, the court limited defendant to the eleven hours of deposition of a particular witness that had already been taken when defendant could not demonstrate that testimony regarding voluminous documents and multiple claims “could not have been incorporated

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<sup>1</sup> One case not cited by plaintiff but providing limited support to her position is Cardenas v. Prudential Ins. Co., 2003 WL 21302960 (D. Minn. May 16, 2003). The court’s holding in Cardenas was much the same as that in Beneville because plaintiff failed to provide the factual support necessary for a showing of good cause. Because plaintiff’s briefs did not show why they required more time in a deposition, they failed to make the required showing of good cause. Id. \*2. Defendant here has explained why he requires additional time to depose plaintiff, i.e., that one of the defendants was unable to explore all of plaintiff’s theories of recovery against him.

into [deposition testimony] already taken, or that further questioning on these documents and claims is reasonably calculated to lead to the discovery of admissible evidence.” Id. at \*\*8-9.

As the court's review of this case law shows, no court has construed the 2000 Advisory Committee notes as causing some profound change in the Rules requiring parties to use a stopwatch and immediately and finally adjourn a deposition after seven hours of testimony taken. As the court noted in Malec (which was cited approvingly in the Nicholas case that plaintiff relies on), "[o]bviously, the Court will allow more than seven hours "if needed for a fair examination of the plaintiff." 208 F.R.D. at 24. The Malec court envisions the “new” deposition process as proceeding as follows:

[T]he better practice is for the deposition to go forward to determine how much is able to be covered in the seven hours and, then, if additional time is needed, for counsel to stipulate to extend the deposition for a specific additional time period. If the parties cannot reach a stipulation, then Court intervention may be sought.

[T]he deposition shall go forward for seven hours during one day. At the conclusion of seven hours, if counsel for defendants needs more time, he/she shall inform plaintiff’s counsel of that fact and counsel shall confer in a good faith attempt to reach a stipulation as to the additional time which will be needed to complete the deposition. If agreement cannot be reached, defendants’ counsel may notify the Court in writing of that fact, the amount of additional time which is needed, and the reasons therefor.

Id. (internal citation omitted). When counsel for defendant Taneeb requested additional time to depose plaintiff, her counsel summarily declined without making any effort, let alone the good faith effort envisioned in Malec, to accommodate their needs. As such, counsel for defendant Taneeb was left with no choice but to turn to this court for assistance.

The court's review of the case law – all of the case law, and not just the few sentences taken from the selected few cases that plaintiff used in his argument to support his position – indicates that that plaintiff's counsel's arguments are entirely without merit. See Advisory Committee Notes regarding Rule 30(b)(2) (2000 amend.) ("This rule directs the court to allow additional time where consistent with Rule 26(b)(2) if needed for a fair examination of the deponent.") See also Condit v. Dunne, 2004 U.S. Dist. LEXIS 24777 (E.D.N.Y. Dec. 8, 2004) (allowing for further depositions of plaintiff "in a manner consistent with ... [the involved lawyers'] obligations and officers of the Court...."); Malec v. Trs. of Boston Coll., 208 F.R.D. 23, 24 (D. Mass. 2002) ("Obviously, the Court will allow more than seven hours "if needed for a fair examination of the plaintiff."); Independence Park Apartments v. United States, 59 Fed. Cl. 765, 769 (2004) (stating that "[e]xtra time "must" be given under the Rule where 'good cause' is shown" in the course of granting extra time where a party was unable, given the seven-hour limit, to conduct the necessary examination); Boston Scientific Corp. v. Cordis Corp., 2004 U.S. Dist. LEXIS 18098, \*\*9-10 (N.D. Ca. Sept. 1, 2004) (stating that it is appropriate to apply the seven-hour limit excepting where "additional time consistent with Fed. R. Civ. P. 26(b)(2) is needed for a fair examination of the deponent...."); Grill v. Costco Wholesale Corp., 2004 WL 2314639 (W.D. Wash. Oct. 7, 2004) (allowing an extension past the seven-hour time where defendants were unable to question plaintiff regarding all of their allegations within that period and granting enough time to finish their questioning).

Here, one of the two defendants was left with only fifteen minutes to explore plaintiff's allegations against him. This case does not present any discovery abuse, and there is good cause to grant defendant Taneeb's request for an additional period of deposition time. The court's review of the

deposition transcripts serves to confirm this point. As such, defendant Taneeb's request under Rule 30(d)(2) for additional time to conduct the deposition of plaintiff is granted.

Enter this 11<sup>th</sup> day of March, 2005.

/s/Michael F. Urbanski  
United States Magistrate Judge